

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

Brian Eugene Lepley,  
Petitioner  
v.  
Dwight Neven, et al.,  
Respondents

2:14-cv-01575-JAD-GWF  
**Order Denying Motion for  
Reconsideration**  
[ECF 43]

Nevada state prisoner Brian Eugene Lepley moves for reconsideration of my February 29, 2016, order dismissing his § 2254 petition as untimely.<sup>1</sup> Because Lepley has given me no valid reason to reconsider my dismissal order, I deny his motion.

When Lepley initiated this action, he erroneously used the form for a 28 USC § 2241 habeas petition, but § 2241 does not apply to petitions brought by persons in custody following a state judgment of conviction. Because the § 2241 form did not contain the required information, I ordered Lepley to file an amended petition on the 28 USC § 2254 form.<sup>2</sup> Lepley timely filed an amended petition on the correct form,<sup>3</sup> which I later dismissed as untimely under 28 USC § 2244(d).<sup>4</sup>

Lepley argues that if I had not required him to use the § 2254 form, then this action would not be governed by the one-year statute of limitations. Lepley is incorrect. Because Lepley is in custody under a state-court judgment, his petition is properly brought under § 2254 and is subject to § 2244(d)'s one-year limitations period regardless of the form used. Lepley's claims simply were not cognizable under § 2241.

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<sup>1</sup> ECF 41.

<sup>2</sup> ECF 5 at 1–2.

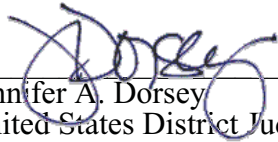
<sup>3</sup> ECF 8.

<sup>4</sup> ECF 41.

**Conclusion**

Accordingly, IT IS HEREBY ORDERED that Lepley's motion for reconsideration [ECF 43] is **DENIED**.

Dated this 12th day of April, 2016.

  
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Jennifer A. Dorsey  
United States District Judge